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Supreme Court, U.S.
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In the

Supreme Court of the United States

United States of America ..... *Petitioner*

V.

Ralph D. Harris and Joan F. Harris ..... *Respondents*

RESPONSE TO PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

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QUESTIONS PRESENTED

1. Whether the courts below erred in determining that Article XV of the Agreement in Implementation of Article III of the Panama Canal Treaty, Sept. 7, 1977, United States-Panama, T.I.A.S. No. 10031, exempts the respondents from United States taxation on the salaries they received from the Panama Canal Commission.

2. Whether the court of appeals erred in refusing to consider a diplomatic note to the Republic of Panama delivered subsequent to entry of the trial court's judgment, setting forth the Panamanian government's interpretation of the Implementation Agreement.

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INTRODUCTION

Respondent, Ralph Harris, submits this memorandum in response to the Petition for Certiorari filed by Petitioner, United States of America, on or about December 11, 1985, seeking review of the opinion of the United States Court of Appeals For The Eleventh Circuit in *Harris v. U.S.*, 768 F.2d 1240 (1985).

STATEMENT

The respondents resided in the territory formerly known as the Canal Zone which was located in the Republic of Panama. Both were employed by the Panama Canal Commission (Commission). The respondents filed federal income tax returns and reported as income the salaries received from the Commission.

In 1980, the respondents filed a claim for refund and maintain that the monies earned between October 1, 1979 and December 31, 1979 were exempt from taxation pursuant to Article XV of the Agreement in Implementation of Article III of the Panama Canal Treaty. (See Appendix of Petitioner's, 1a-2a, 21a-22a.) The respondents prevailed at the district court level.

The government appealed this decision to the Court of Appeals which affirmed. The court reasoned that the language of Article XV(2) of the Implementing Agreement was clear and in fact created a bi-national tax exemption.

The government attempted to introduce a diplomatic note allegedly forwarded from the government of Panama subsequent to the trial court's decision. The Court of Appeals denied the government's request to submit this additional information.

REASONS FOR DENYING PETITION

I.

The decision by the Eleventh Circuit declaring the plain language of the Implementation Agreement as confering reciprocal tax exemption to United States citizen employees of the Commission was based upon the evidence submitted by the petitioner herein and the taxpayer.

The court declared that the language in the international agreement should be construed as a contract. See, *Santovincenzo v. Egan*, 284 U.S. 40, 52 S.Ct. 81, 84, 76 L.Ed. 151 (1931); *Tucker v. Alexandroff*, 183 U.S. 424, 436 (1902).

It is important to note that the impact of this decision or any decision by the Court of Appeals touches only a few United States citizens and a minimum amount of tax dollars when compared with the overall tax liability. Further, it is highly unlikely that this issue will ever be raised again since most of the United States residents have departed from the former Canal Zone.

The respondent contends that the United States employees who relied upon the agreement predicated their reliance upon the very language drafted by the United States negotiators. Whether the language was artful or inartful, the United States should be bound by it since it was a principal party to the document with the drafting responsibility.

II.

Aside from the basic issue of tax exemption, the primary issue to be considered by this court is whether or not additional materials, i.e. self-serving evidence outside of the record, can be considered by the Court of Appeals after

its decision. In *Harris v. U.S.*, 585 F.Supp. 86 (1984), the court decided that the plain language of the Implementation Agreement conferred reciprocal tax exemptions to United States citizen employees of the commission. The Eleventh Circuit left the District Court's reasoning undisturbed. The Eleventh Circuit rightfully refused to accept the late submission of a so-called diplomatic note and, therefore, reached the same conclusions reached by the Claims Court in *Coplin v. U.S.*, 6th Cl.Ct. 115 (1984), reversed at 761 F.2d 688 (*Harris v. United States*, 768 F.2d 1240 (1985)).

The Court of Appeals in *Coplin* reached a different decision primarily because the court considered additional evidence that was not a part of the record in the lower court but was at all times in the control or possession of the petitioner. *Coplin v. United States*, 761 F.2d 688 (Fed. Cir. 1985). Petitioner really contends that the different decisions in different jurisdictions should spur this court to grant certiorari. However, it should be noted that the Eleventh Circuit interpreted a rule of precedure in disallowing the admission into evidence of the diplomatic notes. Thus, it can be argued that the evidence before the court in *Harris* rightfully supports its decision and does not give rise to a split in the circuit sufficient to invoke this court's jurisdiction.

The instant case reveals that the Eleventh Circuit looked at the negotiating history as submitted by the United States Government and decided that the negotiating history supported the reciprocal tax exemption interpretation rather than the restrictive meaning placed upon the language by the government and which is the basis for its Petition For Certiorari. Nothing more was submitted by the government.

The respondents contend that the lower courts ruled correctly when it decided that the international agreement, while possessing force and effect as law, should be construed as contracts. See, *Santovincenzo v. Egan*, 284

U.S. 40, 52 S.Ct. 81, 84, 76 L.Ed. 151 (1931); *Tucker v. Alexandroff*, 183 U.S. 424, 436 (1902).

The respondents respectfully submit that there is no need to disturb the decision of the lower courts since the decision is founded on logic and rules of evidence. The petitioner cannot begin to allege that the lower courts abused its discretion. The impact of the Courts is minimal.

This case should not be considered on an appeal simply because the petitioner wishes to have it considered along with *Coplin*, 6th Clm.Ct. 115 (1984), reversed at 761 F.2d 688. The Petition for Certiorari in this case should be denied because the cases are not on all fours. In *Harris*, the court refused additional evidence and in *Coplin*, the court received additional evidence.

This court has long recognized the principal that certiorari should only be granted for two purposes: first, to secure uniformity of decision between those courts in the nine circuits; and, second, to bring up questions of importance which is in the public interest to have decided by the court of last resort. See *Magnum Import Co. v. Coty*, 262 U.S. 159, 43 S.Ct. 531. Certiorari should not be extended to correct shortcomings in the evidence submitted.

CONCLUSION

In summary, this petition should be denied for the main reason that the court in the instant case predicated its decision upon a record different from *Coplin*. Since the records in *Coplin* and *Harris* are different, there is no reason to call upon the jurisdiction of this court to review a case predicated upon a sufficient record.

Respectfully submitted,

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